

Federal Communications Commission

Docket No. 93-75 File No. 79F 233

Presented by Evans

Identified 12.2.93

Disposition { Received 12.2.93

Rejected

Reporter W. W. Evans

Date 12.2.93

234

ASSET PURCHASE AGREEMENT

This Agreement dated this \_\_\_\_ day of November, 19 91, by and between: (1) RAYSTAY COMPANY (herein referred to as "Seller"), and (2) Trinity Christian Center of Santa Ana, Inc., d/b/a/ Trinity Broadcasting Network, a nonprofit California corporation (herein referred to as "Buyer").

**W I T N E S S E T H:**

WHEREAS, Seller holds a valid, current, and unexpired construction permit issued by the Federal Communications Commission (herein referred to as "FCC" or "Commission") to construct and operate a low power television station on Channel 23 (524.0-530.0 MHz), Lancaster, Pennsylvania (FCC File Number BPTTL-890309PA) (herein referred to as "Station"); and

WHEREAS, Seller is desirous of selling and assigning Station to Buyer, and Buyer is desirous of buying and acquiring Station from Seller;

NOW, THEREFORE, in consideration of the premises and of the mutual promises and covenants contained herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

1. Assets Sold and Purchased. Subject to the approval of the FCC and to the terms and conditions hereof, Seller agrees to sell and Buyer agrees to purchase the following assets, all of which Seller agrees are free and clear of any and all liens and encumbrances of any nature whatsoever:

a. FCC Authorizations. All FCC authorizations and applications for construction and operation of Station as listed in Exhibit A, and hereby incorporated herein.

Federal Communications Commission

Docket No. 43-75 Exhibit No. 16F 234

Presented by Emerson

{ Identified 12.2.93

Disposition { Received 12.2.93

Released           

Approved C. W. Adams

Date 12.2.93

b. Technical Data. All of Seller's schematics, blueprints, engineering data, and other technical information pertaining to the construction and/or operation of the Station.

c. Cash and Accounts Receivable. No cash, bank deposits, or accounts receivable of Seller are to be sold or assigned hereunder; and the same are expressly excluded from this Agreement.

d. Leases. Seller's rights for the antenna/transmitter site approved by the FCC and specified for the Station (Exhibit B attached hereto and hereby incorporated herein).

2. Amount of Purchase Price. In consideration for the sale, assignment, and conveyance to it of the assets listed above, Buyer agrees to pay Seller Five Thousand Dollars (\$5,000.00), or such lesser amount as the FCC may approve, subject to the below listed prorations and adjustments:

a. Taxes. All federal, state, and local taxes, if applicable to the purchase and sale contemplated hereby, shall be borne by Seller.

b. Prorations. Any and all taxes and assessments of any nature and kind, if any, shall be prorated as of 12:00 midnight of the Closing Date.

~~xxxxxx~~ ~~Transmitter Site~~ ~~xxxxxx~~ ~~In the event Seller is unable~~  
~~to provide, for whatever reason, the assignment of its lease,~~  
~~purchase or title rights in the antenna/transmitter site~~

specified in the Station's construction permit and/or attached contract (a) (b) (c) and (d) in the event said antenna transmitter site is unavailable or unusable for construction of the Station, for any reason whatsoever, the Buyer shall have the option to be exercised in its sole discretion to either (a) pay one third (1/3) of the purchase price of \$11,000,000 of \$3,666,666.67 or (b) cancel this Agreement and the Seller shall refund any and all rights or obligations the party has to the other for purposes of this subparagraph 2. the determination that the Station's antenna/transmitter site is unavailable or unusable, for whatever reason, shall be solely that of Buyer.

3.. Payment of Purchase Price. The Purchase Price specified in paragraph 2.a. above shall be paid by Buyer to Seller in cash, or by cashier's check, on the Closing Date specified in paragraph 5, infra.

4. FCC Approval.

a. FCC Approval Required. Consummation of the purchase and sale provided for herein is conditioned upon the FCC having given its consent in writing, without any condition materially adverse to Buyer, to the assignment from Seller to Buyer of all FCC authorizations of Seller relating to the construction and operation of the Station, and said consent having become final. For purposes of this Agreement, such consent shall be deemed to have become final after it is granted

and published and when the time for administrative or judicial review has expired and when the time for the filing of any protest, petition to deny, request for stay, petition for rehearing, or appeal of such order has expired and no protest, petition to deny, request for stay, petition for rehearing or appeal is pending. The parties may mutually agree to waive the requirement that said consent shall have become final.

b. Filing of Application. The parties agree to proceed as expeditiously as practical, to file or cause to be filed an application requesting FCC consent to the transaction herein set forth, and to file said application (i.e., FCC Form 345) with the FCC not later than twenty (20) days after the date of this Agreement. The parties agree that said Application will be prosecuted in good faith and with due diligence. Each party will be solely responsible for the expenses incurred by it in the preparation, filing, and prosecution of the assignment application, and all fees paid to the FCC in connection with the assignment of Station's authorizations from Seller to Buyer will be borne equally by Seller and Buyer.

5. Closing Date and Place. The Closing shall take place within twenty (20) days of the date of the Commission's consent to the assignment of Station to Buyer becomes final (as defined in paragraph 4.a., herein), provided the conditions specified in this Agreement shall have been met, such date to be mutually agreed on by the parties, but within the effective period of the

Commission's consent (the "Closing Date"). The Closing will take place at the offices of Colby M. May, Esq., 1156 15th Street, N.W., Suite 515, Washington, D.C. 20005, or at such other place as Buyer and Seller may select.

6. Seller's Representations and Warranties. Seller represents, warrants, and covenants as follows:

a. Organization and Standing of Seller. Seller is a legally formed and constituted corporation, partnership, limited partnership or joint venture, in good standing under the laws where it is located and doing business, or is a citizen of the United States of America and of the legal age to contract. Seller also holds a valid, issued and unexpired construction permit from the FCC for the Station.

b. Seller's Authority. Except as specifically stated in this Agreement, Seller has full power and authority to sell, transfer, assign, and convey all property herein being sold and assigned, and to execute, deliver and perform this Agreement.

c. Seller Holds Current and Valid FCC Authorizations. Seller has the power and authority to own, construct, and operate the Station and the business and properties related thereto and holds, and on the Closing Date will hold, current and valid authorizations from the FCC which are necessary for Seller to own, construct, and operate the Station. No action or proceeding is pending or, to the knowledge of the Seller, threatened, or on the Closing Date will be threatened or pending, before the FCC or



other governmental or judicial body, for the cancellation, or material and adverse modification, of Station's authorizations.

d. No Material Default in Contractual Commitments.

Seller is not, and on the Closing Date will not be, in material default of any contractual commitment to which it is a party, or by which it is bound, and which is to be assigned to and assumed by Buyer.

e. Good Title to Properties. Seller has, and on the Closing Date will have, clear title and ownership, free of all liens, encumbrances or hypothecations, of all assets and property, rights, leases and contracts being assigned to Buyer hereunder.

f. Claims and Litigation. There is no claim or litigation or proceeding pending or, to the Seller's knowledge, threatened which affects the title or interest of Seller to or in any of the property or assets intended to be sold, assigned, and conveyed hereunder, or which would prevent or adversely affect the ownership, construction, use, or operation of the Station by Buyer.

g. Lease Rights. Seller represents and warrants that it has, and on the Closing Date will have, the right to: (a) construct and/or place the television antenna and all related equipment for the Station on the antenna tower or property identified in the Station's construction permit (Exhibits A & B), and (b) construct and/or place the television transmitter and all

related equipment for the Station in an existing structure on or near the antenna tower or on the site specified in the Station's construction permit (Exhibits A & B).

h. Disclosure. No representation or warranty made by Seller in this Agreement, or any statement or certificate furnished to or to be furnished by the Seller to Buyer pursuant hereto, or in connection with the transactions contemplated hereby contains, or will contain any untrue statement of a material fact or omits, or will omit, to state a material fact necessary to make the statements contained therein not misleading.

7. Buyer's Representations and Warranties. Buyer represents, warrants, and covenants to Seller as follows:

a. Buyer's Organization and Standing. Buyer is a non-profit corporation duly organized and validly existing and in good standing under the laws of the State of California, and possesses all corporate power necessary to construct, own, and operate Station and carry out the provisions of this Agreement.

b. Buyer's Authority. The execution and delivery of this Agreement and the consummation of the purchase of Station provided for herein have been duly and validly authorized by Buyer's board of directors, which possesses the authority under Buyer's articles of incorporation and bylaws to grant such authorization.

c. Disclosure. No representation or warranty made by Buyer in this Agreement, or any statement or certificate furnished to, or to be furnished by, Buyer to Seller pursuant hereto, or in connection with the transaction contemplated hereby, contains, or will contain, any untrue statement of a material fact, or omits, or will omit, to state a material fact necessary to make the statements contained therein not misleading.

8. Risk of Loss. Risk of loss, damage, or destruction to the property and assets to be sold and conveyed hereunder shall be upon the Seller until the Closing Date, and after Closing is consummated upon the Buyer.

9. Access to Information. Seller shall accord access, during normal business hours prior to Closing, to Buyer or its designated representative to review Seller's physical properties, contracts to be assumed by Buyer, and accounting records which pertain exclusively to the Station.

10. Brokers. Buyer and Seller hereby represent and warrant to the other that neither is bound or obligated to pay any sales Commission, brokers or finders fees in connection with the transaction contemplated herein.

11. Indemnification by Seller. Seller shall indemnify and hold harmless Buyer against and in respect of:

a. Operations Prior to Closing. Any and all liabilities, obligations, claims, and demands arising out of:

the right to construct, own, or operate the Station (including, but not limited to, claims related to compliance with FCC rules and regulations), any breach by Seller of this Agreement, or any inaccuracy in or breach of any representation, warranty, or covenant made by Seller herein.

b. Defense. Should any claim covered by the foregoing indemnity be asserted against Buyer, Buyer shall notify Seller promptly and give it an opportunity to defend the same and Buyer shall extend reasonable cooperation to Seller in connection with such defense. In the event that Seller fails to defend the same within a reasonable time, Buyer shall be entitled to assume, but need not assume, the defense thereof and Seller shall be liable to repay Buyer for all damages suffered by Buyer and all of its expenses reasonably incurred in connection with such defense (including, but not limited to, reasonable attorney fees and settlement payments).

12. Indemnification by Buyer. Buyer shall indemnify and hold harmless Seller against and in respect of:

a. Operations after Closing. Any and all liabilities, obligations, claims, and demands arising after the Closing Date out of the construction or operation of the Station, the breach or non-performance by Buyer of contractual commitments assumed by Buyer hereunder, or any other operations of Buyer after the Closing Date, or any breach by Buyer of this Agreement or any inaccuracy in or breach by Buyer of this Agreement or any

inaccuracy in or breach of any representation, warranty, or covenant made by Buyer herein.

b. Defense. Should any claim covered by the foregoing indemnity be asserted against Seller, Seller shall notify Buyer promptly and give it an opportunity to defend the same, and Seller shall extend reasonable cooperation to Buyer in connection with such defense. In the event Buyer fails to defend the same within a reasonable time, Seller shall be entitled to assume, but need not assume, the defense thereof, and Buyer shall be liable to repay Seller for all damages suffered by Seller and all its expenses reasonably incurred in connection with such defense (including, but not limited to, reasonable attorney's fees and settlement payments).

13. Conditions Precedent to Buyer's Obligations to Close. Buyer shall not be obligated to close under this Agreement unless and until the following conditions have been met:

a. The FCC shall have given its consent to the assignment of FCC authorizations to construct and operate the Station from Seller to Buyer and said consent shall have become final as set forth in paragraph 4.a. herein.

b. Seller shall have performed and complied with all the agreements, obligations, and conditions required by this Agreement to be performed or complied with by it, prior to or as of the Closing Date.

c. Seller shall hold a valid, current, and unexpired construction permit for the Station.

d. The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

14. Conditions Precedent to Seller's Obligations to Close. Seller shall have no obligation to close this Agreement unless and until the following conditions precedent are met:

a. The FCC has given its consent to the assignment of the FCC authorizations to construct and operate the Station from Seller to Buyer and said consent shall have become final as set forth in paragraph 4.a herein.

b. The representations and warranties of Buyer as set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

c. Buyer shall have performed and complied with all the agreements, obligations, and conditions required by this Agreement to be performed or complied with by it, prior to or at the Closing Date.

15. Buyer's Performance at Closing. At the Closing, Buyer will:

a. Pay to Seller the purchase price as described and/or calculated in paragraph 2 herein.

b. Deliver to Seller such instruments as Seller may reasonably require in order to consummate the transactions provided for in this Agreement.

c. Deliver to Seller a certified copy of a resolution of Buyer's board of directors authorizing the consummation of the transactions provided for in this Agreement.

16. Seller's Performance at Closing. At the Closing, Seller shall:

a. Deliver to Buyer the FCC authorizations listed in Exhibit A, together with such assignments of the same as Buyer may reasonably require.

b. Deliver to Buyer such assignments and further instruments of conveyance as Buyer may reasonably require to effectuate the assignment from Seller to Buyer of the Station and assets being transferred and assigned herein, including the rights specified in paragraph 1.d. herein.

17. Survival of Warranties. All representations, warranties, and covenants made by the parties in this Agreement shall be deemed made for the purpose of inducing the other to enter into this Agreement and shall survive the Closing and remain operative in full force and effect regardless of any investigation at any time made by either and shall not be deemed merged into any document or instrument executed or delivered at the Closing.

18. No Assignment. This Agreement may not be assigned by Buyer without Seller's prior written consent.

19. Term.

a. Term of Agreement. This Agreement shall be in effect for a term commencing on the date of this Agreement and terminating at 12:00 midnight eighteen (18) months later. In the event the Closing of this transaction shall not take place within the time limit hereinabove set forth solely by reason of the inability of Seller or Buyer to provide the various consents and approvals as set forth in paragraph 4 herein, then this Agreement shall automatically terminate and both parties shall be relieved of any further liability or obligations hereunder.

b. Termination on Notice for Hearing. If the Commission designates the application contemplated by this Agreement for hearing by action no longer subject to reconsideration or administrative review, either party shall have the option of terminating this Agreement by written notice to the other party prior to the commencement of the hearing, and in such an event this Agreement shall terminate at the option of either party and both parties shall then be relieved of any and all liabilities or obligations hereunder.

20. Specific Performance. The parties recognize the uniqueness of the Station and the assets, authorizations, and attributes that are associated with its operation, and for that reason agree that Buyer shall have the right to specific



performance of this Agreement upon default of Seller. Election by Buyer of this equitable right of specific performance shall not be in lieu of any claim to damages.

21. Notices. Any notices, requests, demands, or consents required or permitted to be given hereunder shall be in writing, sent by certified or registered mail, postage prepaid, or by prepaid telegram, confirmed by mail, as follows:

If to Seller: Mr. David Gardner  
Raystay Company & Waymaker Co  
P.O. Box 38  
Carlisle, PA 17013 (717) 245-0040  
(717) 245-9277 fax

With Copy to: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If to Buyer: Paul F. Crouch, President  
Trinity Broadcasting Network  
P. O. Box C-11949  
Santa Ana, California 92711

With Copy to: Colby M. May, Esq.  
May & Dunne, Chartered  
1000 Thomas Jefferson Street, N.W.  
Suite 520  
Washington, D.C. 20007

or to such other addresses as either party may designate from time to time by written notice to the other party.

22. Further Assurances. Each of the parties hereto shall execute and deliver to the other party hereto such other instruments as may be reasonably required in connection with the performance of this Agreement.

23. Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

24. Entire Agreement. This Agreement supersedes all prior agreements and understandings between the parties and may not be changed or terminated orally, and no attempted change, termination, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties.

25. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

SELLER:

WITNESS:

By \_\_\_\_\_

By: \_\_\_\_\_

BUYER:

WITNESS:

By \_\_\_\_\_

By: \_\_\_\_\_

Allan Brown  
Assistant Secretary

# ASSET PURCHASE AGREEMENT

This Agreement dated this \_\_\_\_ day of November, 19 91, by and between: (1) RAYSTAY COMPANY (herein referred to as "Seller"), and (2) Trinity Christian Center of Santa Ana, Inc., d/b/a/ Trinity Broadcasting Network, a nonprofit California corporation (herein referred to as "Buyer").

## **W I T N E S S E T H:**

WHEREAS, Seller holds a valid, current, and unexpired construction permit issued by the Federal Communications Commission (herein referred to as "FCC" or "Commission") to construct and operate a low power television station on Channel 31 (572.0-578.0MHz), Lancaster, Pennsylvania (FCC File Number BPTTL-890309NY) (herein referred to as "Station"); and

WHEREAS, Seller is desirous of selling and assigning Station to Buyer, and Buyer is desirous of buying and acquiring Station from Seller;

NOW, THEREFORE, in consideration of the premises and of the mutual promises and covenants contained herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

1. Assets Sold and Purchased. Subject to the approval of the FCC and to the terms and conditions hereof, Seller agrees to sell and Buyer agrees to purchase the following assets, all of which Seller agrees are free and clear of any and all liens and encumbrances of any nature whatsoever:

a. FCC Authorizations. All FCC authorizations and applications for construction and operation of Station as listed in Exhibit A, and hereby incorporated herein.

b. Technical Data. All of Seller's schematics, blueprints, engineering data, and other technical information pertaining to the construction and/or operation of the Station.

c. Cash and Accounts Receivable. No cash, bank deposits, or accounts receivable of Seller are to be sold or assigned hereunder; and the same are expressly excluded from this Agreement.

d. Leases. Seller's rights for the antenna/transmitter site approved by the FCC and specified for the Station (Exhibit B attached hereto and hereby incorporated herein).

2. Amount of Purchase Price. In consideration for the sale, assignment, and conveyance to it of the assets listed above, Buyer agrees to pay Seller Five Thousand Dollars (\$5,000.00 ), or such lesser amount as the FCC may approve, subject to the below listed prorations and adjustments:

a. Taxes. All federal, state, and local taxes, if applicable to the purchase and sale contemplated hereby, shall be borne by Seller.

b. Prorations. Any and all taxes and assessments of any nature and kind, if any, shall be prorated as of 12:00 midnight of the Closing Date.

~~xxxxxxxTransmitter SitexxxxxxIn the event Seller is unable to provide, for whatever reason, the assignment of its lease, purchase or title rights in the antenna/transmitter site~~

specified in the Station's construction permit and/or attached contract (a) Exhibits and (b) in the event said antenna transmitter site is unavailable, or unable for construction of the Station, for any reason whatsoever, the Buyer shall have the option to be exercised in its sole discretion to either (a) pay one third (1/3) of the purchase price, i.e., 1/3 of \$XXXXXXXXXXXX equals \$XXXXXXXX, or (b) cancel this Agreement and hereby extinguish any and all rights or obligations either party has to the other. For purposes of this subparagraph, the determination that the Station's antenna/transmitter site is unavailable, for whatever reason, shall be solely that of Buyer.

3. Payment of Purchase Price. The Purchase Price specified in paragraph 2.a. above shall be paid by Buyer to Seller in cash, or by cashier's check, on the Closing Date specified in paragraph 5, infra.

4. FCC Approval.

a. FCC Approval Required. Consummation of the purchase and sale provided for herein is conditioned upon the FCC having given its consent in writing, without any condition materially adverse to Buyer, to the assignment from Seller to Buyer of all FCC authorizations of Seller relating to the construction and operation of the Station, and said consent having become final. For purposes of this Agreement, such consent shall be deemed to have become final after it is granted

and published and when the time for administrative or judicial review has expired and when the time for the filing of any protest, petition to deny, request for stay, petition for rehearing, or appeal of such order has expired and no protest, petition to deny, request for stay, petition for rehearing or appeal is pending. The parties may mutually agree to waive the requirement that said consent shall have become final.

b. Filing of Application. The parties agree to proceed as expeditiously as practical, to file or cause to be filed an application requesting FCC consent to the transaction herein set forth, and to file said application (i.e., FCC Form 345) with the FCC not later than twenty (20) days after the date of this Agreement. The parties agree that said Application will be prosecuted in good faith and with due diligence. Each party will be solely responsible for the expenses incurred by it in the preparation, filing, and prosecution of the assignment application, and all fees paid to the FCC in connection with the assignment of Station's authorizations from Seller to Buyer will be borne equally by Seller and Buyer.

5. Closing Date and Place. The Closing shall take place within twenty (20) days of the date of the Commission's consent to the assignment of Station to Buyer becomes final (as defined in paragraph 4.a., herein), provided the conditions specified in this Agreement shall have been met, such date to be mutually agreed on by the parties, but within the effective period of the

Commission's consent (the "Closing Date"). The Closing will take place at the offices of Colby M. May, Esq., 1156 15th Street, N.W., Suite 515, Washington, D.C. 20005, or at such other place as Buyer and Seller may select.

6. Seller's Representations and Warranties. Seller represents, warrants, and covenants as follows:

a. Organization and Standing of Seller. Seller is a legally formed and constituted corporation, partnership, limited partnership or joint venture, in good standing under the laws where it is located and doing business, or is a citizen of the United States of America and of the legal age to contract. Seller also holds a valid, issued and unexpired construction permit from the FCC for the Station.

b. Seller's Authority. Except as specifically stated in this Agreement, Seller has full power and authority to sell, transfer, assign, and convey all property herein being sold and assigned, and to execute, deliver and perform this Agreement.

c. Seller Holds Current and Valid FCC Authorizations. Seller has the power and authority to own, construct, and operate the Station and the business and properties related thereto and holds, and on the Closing Date will hold, current and valid authorizations from the FCC which are necessary for Seller to own, construct, and operate the Station. No action or proceeding is pending or, to the knowledge of the Seller, threatened, or on the Closing Date will be threatened or pending, before the FCC or

other governmental or judicial body, for the cancellation, or material and adverse modification, of Station's authorizations.

d. No Material Default in Contractual Commitments.

Seller is not, and on the Closing Date will not be, in material default of any contractual commitment to which it is a party, or by which it is bound, and which is to be assigned to and assumed by Buyer.

e. Good Title to Properties. Seller has, and on the Closing Date will have, clear title and ownership, free of all liens, encumbrances or hypothecations, of all assets and property, rights, leases and contracts being assigned to Buyer hereunder.

f. Claims and Litigation. There is no claim or litigation or proceeding pending or, to the Seller's knowledge, threatened which affects the title or interest of Seller to or in any of the property or assets intended to be sold, assigned, and conveyed hereunder, or which would prevent or adversely affect the ownership, construction, use, or operation of the Station by Buyer.

g. Lease Rights. Seller represents and warrants that it has, and on the Closing Date will have, the right to: (a) construct and/or place the television antenna and all related equipment for the Station on the antenna tower or property identified in the Station's construction permit (Exhibits A & B), and (b) construct and/or place the television transmitter and all



related equipment for the Station in an existing structure on or near the antenna tower or on the site specified in the Station's construction permit (Exhibits A & B).

h. Disclosure. No representation or warranty made by Seller in this Agreement, or any statement or certificate furnished to or to be furnished by the Seller to Buyer pursuant hereto, or in connection with the transactions contemplated hereby contains, or will contain any untrue statement of a material fact or omits, or will omit, to state a material fact necessary to make the statements contained therein not misleading.

7. Buyer's Representations and Warranties. Buyer represents, warrants, and covenants to Seller as follows:

a. Buyer's Organization and Standing. Buyer is a non-profit corporation duly organized and validly existing and in good standing under the laws of the State of California, and possesses all corporate power necessary to construct, own, and operate Station and carry out the provisions of this Agreement.

b. Buyer's Authority. The execution and delivery of this Agreement and the consummation of the purchase of Station provided for herein have been duly and validly authorized by Buyer's board of directors, which possesses the authority under Buyer's articles of incorporation and bylaws to grant such authorization.